Supreme Court, U.S.
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No. 92-1394

In The

Supreme Court of the United States

October Term, 1992

EL VOCERO DE PUERTO RICO
(CARIBBEAN INTERNATIONAL NEWS CORP.);
TOMAS DE JESUS MANGUAL,

Petitioners,

vs.

CARMEN LUCILA DOMINGUEZ ORSINI, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The Commonwealth Of Puerto Rico

REPLY TO RESPONDENTS' OPPOSITION

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REPLY TO RESPONDENTS' OPPOSITION

Now come Petitioners and respectfully reply to the Opposition brief filed by Respondents.

The First Amendment issue has been dispositively adjudicated. Commonwealth courts have entertained and concretely resolved the federal issue, recognizing a cause of action in Puerto Rico that would be untenable in any of the fifty States. They hold that, notwithstanding the First Amendment case law of this Court requiring that a publication be "of and concerning" the plaintiff,[1] respondents have a "valid and protected cause of action." App. to Pet. for Cert. 14. Even though further proceedings remain, petitioner's First Amendment rights have been "finally decided in the state courts."[2] Since the underlying facts are not in controversy, the federal issue will survive discovery proceedings and trial intact. No further review of the decision is available until after trial on the merits.

Respondents cautiously refrain from comment as to the "merits" of the adjudication. They do not contend that the issue has been decided correctly.[3] They rely on an

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[1] *New York Times v. Sullivan*, 376 U.S. 254, 288-292 (1964) and *Rosenblatt v. Baer*, 383 U.S. 75, 82-83 (1966). See discussion at pp. 8-9 of our Petition for Certiorari.

[2] *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 482 (1975). See *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971); *Mills v. Alabama*, 384 U.S. 214 (1966).

[3] An elaborate effort to distinguish the Puerto Rico and California preliminary hearings was recently called "insubstantial" by this Court. See, *El Vocero v. Puerto Rico*, No. 92-949 (Per Curiam Opinion issued May 17, 1993). There, as in this case, First Amendment rights were too readily subordinated to the Commonwealth's interest in protecting privacy interests.

unacceptably mechanical approach to the finality requirement of 28 U.S.C. Secs. 1257-1258. In contrast, this Court has traditionally used a more flexible, pragmatic approach.[4] This Court's expressions in *Forgay v. Conrad*, 6 Howard 201, 203 (1848), some 145 years young, are an appropriate joinder to the conclusory argument that the ruling is not "final":

> Undoubtedly, it is not final, in the strict, technical sense of that term. But this court has not heretofore understood the words "final decrees" in this strict and technical sense, but has given to them a more liberal, and, as we think, a more reasonable construction, and one more consonant to the intention of the Legislature.

Prompt adjudication of the proper scope of First Amendment rights has been consistently recognized by this Court as "a 'federal policy' that merits application of an exception to the general finality rule."[5] Until an

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[4] See *Cox, supra*, 420 U.S. at 479, n.8. Many cases stress the importance of delay in jeopardizing the federal rights involved. See, e.g., Wright, Miller, Cooper & Gresham, *Federal Practice and Procedure*, secs. 4008-4010; Note, *The Finality Rule for Supreme Court Review of State Court Orders*, 91 Harv. L.Rev. 1004, 1016 (1978) ("[F]orcing the appellant to await the official conclusion and to bring his appeal once again through the state court system entails the expenditure of both judicial and litigants' resources not in consideration of substantive issues, but in the sterile exercising of satisfying the formal indicia of finality.").

[5] *Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46, 55 (1989), citing *National Socialist Party of America v. Skokie*, 432 U.S. 43, 44 (1977). Potential erosion of other important federal policies *pendente lite* has been seen as a legitimate basis to grant immediate vindication of the federal right. *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174 (1988); *Southland Corp. v. Keating*, 465 U.S. 1 (1984).

authoritative decision is issued by this Court on this matter, the news media in Puerto Rico will continue to be subjected to the chilling effects of new litigation by unknown potential plaintiffs. We were denied consolidation with three other El Vocero Appeals which have been submitted for resolution for an inordinately long time before the Commonwealth Supreme Court. App. to Pet. for Cert. 17. The First Amendment "of and concerning" requirement is dispositive of those appeals as well as the present case.[6]

None of them can survive the constitutional hurdle erected by *New York Times* and *Rosenblatt*. With denial of review the Puerto Rico Supreme Court has decided the issue silently, but nonetheless eloquently.

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[6] See n.7 of our Petition. In the *Rodríguez* and *Campoamor* cases, under consideration for 3 years, El Vocero seeks reversal of denials of summary judgment. In *González*, summary judgment was granted to El Vocero; the appeal was promptly granted *and* consolidated *motu proprio* with the other 2 pending cases.

CONCLUSION

For the foregoing reasons, we submit that this Court has jurisdiction over the present Petition, and request that the writ be granted in light of the merits of the case.

Respectfully, submitted, this 1st day of June, 1993.

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